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Via E-mail and U.S. Mail

May 25, 2006

Karl Fingerhood, Esq.  
Trial Attorney - Environmental Enforcement  
Section  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611

Taly Jolish  
Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Re: U.S. v. Powerine, et al.

Dear Karl:

First, we again wanted to thank the United States for presenting us with its response to our settlement offer on May 17, 2006. We believe that the government's response is a step in the right direction and we are hopeful that we will be able to find common ground which will permit the parties to resolve this matter.

Second, we wanted to respond to the government's proposal before our conference call scheduled for next week. Based on our discussion with the United States, we understand that it agrees that Powerine's ongoing operations are insufficient to generate any significant cash to contribute towards settlement. However, the United States believes that cash will be generated as a result of the liquidation which should be available to the United States to resolve Powerine's environmental liabilities. Therefore, the United States stated that it does not believe that this is a classic ability to pay case and proposed that Powerine pay the United States \$4.5 million in cash.

As the United States is well aware Powerine does not have that much cash available to fund a settlement. Moreover, as the considerable information provided by Powerine to the United States demonstrates, Powerine needs all of the cash it will generate from equipment and property sales, plus a large insurance recovery, simply to cover its environmental liabilities other than those associated with WDI. Enclosed is a chart listing the environmental liabilities as well as the assets available to satisfy these liabilities.<sup>1</sup> Because we cannot estimate, with any certainty, the amount that our insurance carriers will be willing to pay, we have left those lines blank. As the chart demonstrates, however, Powerine would have to receive an enormous settlement with its carriers (between \$18 million and \$30 million) just to cover its anticipated

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<sup>1</sup> Also enclosed, as requested, is a chart describing Powerine's overhead expenses.



liabilities *without* making any contribution for WDI.<sup>2</sup> If Powerine were required to pay the currently proposed amount requested by the United States, the shortfall would be that much higher.

Powerine previously offered to pay \$600,000 which, we believed, and continue to believe, is fair given the prior demands by the United States and the difficulties which the United States will have proving that Powerine is liable at all. Nevertheless in order to attempt to reach a resolution, Powerine is willing to offer \$1,000,000 to be paid within 90 days after Court approval of a consent decree. Powerine is also willing to consider paying the United States an agreed upon share of what it recovers for the WDI Site from the carriers for whom the United States has discovered the London securities. However, we cannot intelligibly discuss this possibility until we have the information found by the United States. As previously noted, a settlement would have to include releases for the OII Site as well as for the Rothschilds.<sup>3</sup>

We look forward to discussing this offer with you during the conference call scheduled for 10:00 a.m. on May 31, 2006.

Sincerely,

E. E.

Albert M. Cohen  
of Loeb & Loeb LLP

AMC:amc  
07152010002  
LA1542552.1

cc: Vincent Papa

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<sup>2</sup> Note that Powerine expects the carriers to vigorously litigate their indemnity, as opposed to defense, obligation. Therefore, it expects to have to incur significant legal costs to obtain any significant amounts for reimbursement of cleanup costs.

<sup>3</sup> Powerine is willing to commit to use the proceeds from the equipment sale to cover the onsite cleanup and related expenses. However, it is not willing to agree to place the funds in an escrow account controlled by others.

# Lakeland Development Company - Overhead Projection

	Amount	Description
Salary & Benefits	\$ 200,000	Payroll & taxes, medical, dental, vision & life insurance, workers compensation - 19 employees*
Utilities	10,000	Electricity, gas, water and nitrogen (equip. preservation) costs
Site Maintenance	20,000	Equip. rental, contractors, maintenance services, materials, supplies & auto related costs
G & A	50,000	Liability, pollution & auto insurance, travel costs, telephone, office supplies, bank fees, courier costs, legal
Monthly Estimate	\$ 280,000	
		<b>*Employees</b>
		CEO
		Controller-VP
		Accounting Manager
		Accounting Supervisor
		Engineer Pipeline-offside & onsite pipeline monitoring, engineering project manager
		Groundkeeper/Maintenance-required by city to maintain perimeter landscape weed control & janitorial duties
		Groundkeeper/Maintenance-required by city to maintain perimeter landscape weed control & janitorial duties
		Guard-security for 55 acre site as mandated by city & fire dept. because of potential risk associated with
		Guard (cont.) hydrocarbons & chemicals at the site.
		Guard " " " " "
		Guard " " " " "
		Manager Refinery/Executive VP-equipment sales, operations
		Marketing Executive
		Marketing-VP: wastewater & biodiesel marketing
		Secretary Executive
		Shift Coordinator Refinery
		Sr. Environmental Engineer-permits, water board monitoring & future remediation planning.
		Superintendent Operations-managed contractors for equipment removal
		Supervisor Warehouse-equipment spare parts control & maintenance of operations equipment

	Low	High	Average
<b>Environmental Liabilities</b>			
Refinery Soil and GW	\$18,000,000	\$27,000,000	\$22,500,000
Well Abandonment	\$2,700,000	\$4,000,000	\$3,350,000
Asbestos Removal	\$1,500,000	\$1,500,000	\$1,500,000
Equipment Demolition	\$1,000,000	\$1,000,000	\$1,000,000
Foundation Removal	\$1,000,000	\$1,000,000	\$1,000,000
Tank Cleaning	\$2,000,000	\$2,000,000	\$2,000,000
Pipeline reconfiguration, lead house demolition, catalyst handling and disposal, sour water disposal, street tunnel abandonment	\$1,200,000	\$1,200,000	\$1,200,000
Overhead during closure period (4 yrs.)	\$13,440,000	\$13,440,000	\$13,440,000
Jet fuel tank removal	\$750,000	\$1,000,000	\$875,000
Huntington Pipeline	\$1,000,000	\$5,000,000	\$3,000,000
Local Pipelines	\$10,000,000	\$20,000,000	\$15,000,000
Mills Litigation	\$500,000	\$650,000	\$575,000
DTSC Lien	\$450,000	\$450,000	\$450,000
City Lien	\$500,000	\$500,000	\$500,000
Property Tax	\$4,000,000	\$4,000,000	\$4,000,000
<b>Total Liabilities</b>	<b>\$58,040,000</b>	<b>\$82,740,000</b>	<b>\$70,390,000</b>
<b>Available Resources</b>			
Land (contingent upon cleanup)	\$24,000,000	\$24,000,000	\$24,000,000
Equipment	\$15,000,000	\$15,000,000	\$15,000,000
London Insurance (net of legal fees)	?	?	?
Net U.S. Insurance (net of legal fees)	?	?	
Ongoing operations (4 yrs water treatment)	\$960,000	\$960,000	\$960,000
<b>Total Assets</b>	<b>\$39,960,000</b>	<b>\$39,960,000</b>	<b>\$39,960,000</b>
<b>Deficiency w/o WDI Settlement</b>	<b>\$18,080,000</b>	<b>\$42,780,000</b>	<b>\$30,430,000</b>